

THE WHITE HOUSE
WASHINGTON

July 11, 1981

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LG Kent County

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My dear Mr. President: - (Jerry)

I very much appreciated your letter of June 25, recommending Judge Cornelia Kennedy for the Supreme Court vacancy created by the resignation of Mr. Justice Stewart. Many other distinguished people spoke on her behalf, but I was particularly pleased to receive your assessment of her qualifications. She obviously is a judge of ability and integrity, and I can say to you that she was among those individuals given the closest consideration.

I trust that you know I always welcome your judgement.

Sincerely,

Ron

The Honorable
Gerald R. Ford
Post Office Box 927
Rancho Mirage
California 92270

01986555

Referred by attached memo 7/13/81
810713 to Fred Fielding



GERALD R. FORD

June 25, 1981

Dear Mr. President:

Enclosed is a letter I received from the five Circuit Court Judges in Kent County, Michigan, endorsing Judge Cornelia Kennedy for the vacancy on the United States Supreme Court.

I personally know each of the five Circuit Court Judges and greatly value their judgment of the qualifications of Judge Cornelia Kennedy who presently serves on the United States Circuit Court of Appeals for the Sixth United States Circuit.

Over the years, I have closely observed the judicial performance of Judge Cornelia Kennedy as she has served both Michigan and the United States court systems. She has carried out her judicial duties with great distinction and, in my judgment, would serve our nation exceedingly well as a member of the United States Supreme Court.

Warmest, best wishes,

Respectfully,

A handwritten signature in dark ink, reading "Ronald Reagan". The signature is stylized, with the first name "Ronald" written in a cursive script and the last name "Reagan" in a more formal, blocky style.

The Honorable Ronald Reagan
President of the United States
The White House
Washington, D.C. 20505

CIRCUIT COURT

17TH JUDICIAL CIRCUIT

HALL OF JUSTICE
333 MONROE AVE., N.W.
GRAND RAPIDS, MICHIGAN 49502
TELEPHONE (616) 774-3658



GEORGE R. COOK,
Circuit Judge

June 19, 1981

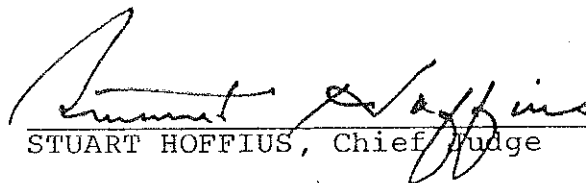
President Gerald R. Ford

Dear Mr. President:

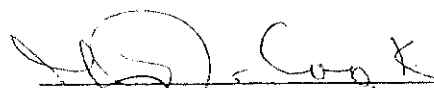
The Circuit Judges of Kent County urge you to bring to President Reagan's attention Judge Cornelia Kennedy for the forthcoming vacancy on the United States Supreme Court. Judge Kennedy is a former circuit judge of Wayne County, a former United States District Court judge for the Eastern District of Michigan, and is presently on the United States Circuit Court of Appeals for the Sixth United States Circuit.

Judge Kennedy has been an outstanding judge, both at the trial and appellate level. We believe her appointment to the Supreme Court would be a great benefit to the nation and a singular honor for the State of Michigan. In our opinion, she is eminently qualified to be a Justice of the Supreme Court of the United States and we urge her appointment.

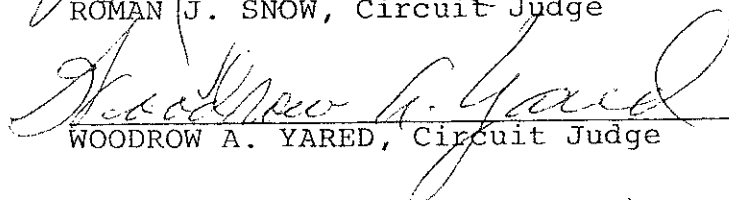
Very truly yours,


STUART HOFFIUS, Chief Judge


GEORGE V. BOUCHER, Circuit Judge


GEORGE R. COOK, Circuit Judge


ROMAN J. SNOW, Circuit Judge


WOODROW A. YARED, Circuit Judge

GRC/sm

HONORABLE CORNELIA KENNEDY

E.D. Mich. 6th Cir.
Court of Appeals

CORNELIA B. KENNEDY

Judge Kennedy, 58, received undergraduate and law degrees from the University of Michigan (A.B. 1945; J.D. 1947). She served on the Law Review at Michigan and following graduation was a law clerk to Judge Harold Stephens of the United States Court of Appeals for the District of Columbia Circuit. From 1948-1967, she was in private law practice in Detroit and from 1967-1970 served as state court judge on the Wayne County Circuit Court. In 1970 she was appointed by President Nixon to be United States District Judge for the Eastern District of Michigan. In September, of 1979, Judge Kennedy was confirmed as United States Circuit Judge for the Sixth Circuit. She has been rated "Well-Qualified" by the ABA Standing Committee.

As a United States District Judge, Judge Kennedy published more than 80 full opinions and was reversed relatively few times by the Sixth Circuit. In approximately 14 months on the Sixth Circuit, she has published 43 full opinions. Her written product is extremely conscientious and thorough, albeit at times emphasizing relatively tangential considerations and arguments. Her opinions are clear and reflect what may be characterized as very good analytical ability. Moreover, the quality of her work has improved discernibly over the years.

One of Judge Kennedy's foremost qualities is a consistent approach to recurring issues which evinces a generally conservative judicial philosophy. She has demonstrated a reluctance to interfere with decisions reached by legislatures, state courts, administrative agencies, and even private associations, absent a persuasive showing of error or irregularity. Her most controversial decision -- and one which raised great opposition to her appointment to the Sixth Circuit from individuals such as Drew Days -- reflects this conservative viewpoint.

In United States v. School District of Ferndale, 460 F. Supp. 352 (E.D. Mich. 1979), Judge Kennedy, after an earlier refusal was reversed by the Sixth Circuit, reached the merits of a less than clearcut school desegregation case brought by the Civil Rights Division. In a thorough analysis which the Sixth Circuit reversed, Judge Kennedy refused to find de jure segregation warranting the requested busing remedy. Judge Kennedy held that unlawful intent to segregate was not established merely by the drawing of school boundaries "in a fashion which placed the students in the school nearest their home." Rather, she continued:

"to have denied the residents of this area an elementary school conveniently located within one-half mile of their home, while providing white residents in other portions of the district with schools within such a half-mile, which School District did, would have been discriminatory."

Judge Kennedy has exercised similar conservative restraint in other decisions. She has refused to hear federal antitrust claims by plaintiffs with directly related state actions pending. Moreover, she normally defers to lower court or agency-factual determinations. While having published relatively few criminal procedure decisions, she has adhered closely to the current Supreme Court view that, absent compelling circumstances, habeas corpus review of state court convictions should be denied in cases in which defendants waived or fairly litigated procedural objections in state courts.

Judge Kennedy consistently refuses to apply too expansively procedural due process "notice" requirements under the Fifth Amendment, for example, in cases involving class action settlements or benefit terminations or employee sanctions. She has, in turn, also sought to impose a reasonable degree of finality in statutory claims cases -- for example, under the Age Discrimination Employment Act -- through application of statutes of limitation and related procedural rules.

Finally, Judge Kennedy has had experience in reviewing claims lodged under 42 U.S.C. § 1983 and has been criticized by some liberals as having taken an unduly narrow view of the rights and remedies conferred under that statute.

Judge Kennedy is, in short, a highly respected judge who appears consistently to apply to her opinions a conservative judicial philosophy. Her work is generally well reasoned, if not always outstanding in conciseness or insight. On balance, she should be considered a very strong candidate.

CORNELIA C. KENNEDY

| | | |
|------------------|-----------------------------|--|
| Born: | August 4, 1923 | Detroit, Michigan |
| Legal Residence: | Michigan | |
| Marital Status: | Married | Charles Stuart Kennedy 1 child |
| Education: | 1947 - 1947 1945 1947 | University of Michigan A.B. degree J.D. degree |
| Bar: | 1947 | Michigan |
| Experience: | 1947 - 1948 | Law Clerk to Chief Judge Harold M. Stephens, D.C. Court of Appeals |
| | 1948 - 1952 | Practiced law with her father, Elmer H. Groefsema |
| | 1953 | Practiced law with her sister, Margaret C. Schaeffer |
| | 1953 - 1966 | Markle & Markle partner |
| | 1966 - 1970 | Judge, Third Judicial Circuit of the State of Michigan |
| | 1970 - 1977 | U.S. District Judge Eastern District of Michigan |
| | 1977 - 1979 | Chief Judge, U.S. District Court, Eastern District of Michigan |
| | 1979 - Present | U.S. Circuit Judge, 6th Circuit Court of Appeals |

TAB

CASE

SUBJECT MATTER

HOLDING (MAJORITY OPINION)

OBSERVATIONS

S

Kroger Co. v.
NLRB (6th Cir. 1980)

Labor Law: Secondary
boycotts

For Petitioner. In view of inseparable relationship between general grocery store operations and the use of paper bags, consumer picketing in shopping center constituted an illegal secondary boycott of neutral grocery store.

1. Reversed District Court findings.
2. Extremely logical opinion.

T

U.S. v. Sizemore
(6th Cir. 1980)

Sufficiency of
evidence to support
criminal conviction.

Conviction of one co-defendant for making explosive device was reversed due to minimal circumstantial evidence attributable directly to him.

1. Conviction of one co-defendant affirmed; conviction of the other co-defendant reversed.
2. Thorough, but unremarkable opinion.

U

Parish v. Califano
(6th Cir. 1981)

Eligibility for
social security child
disability benefits.

For claimant-appellant. Multiple sclerosis victim's ability to work after the cutoff date for child disability benefits does not rebut evidence that disability occurred prior to cutoff date.

1. Reversed administrative denial of benefits.
2. Opinion is fair and supported by HHS regulations which provide that multiple sclerosis should be viewed as an "episodic" disease.

V

Laskey v. International
(U.A.W.) (6th Cir. 1981)

Settlement of class
action

For defendant-appellees. Disappointed class members cannot challenge settlement in Rule 23(b)(2) class action absent evidence of improper notice or inadequate representation.

1. Affirmed District Court findings.
2. Opinion emphasizes the importance of settlements and encourages reasonable finality in litigation.

OPINIONS OF JUDGE CORNELIA KENNEDY (Eastern District of Michigan, Sixth Circuit Court of Appeals)

| <u>TAB</u> | <u>CASE</u> | <u>SUBJECT MATTER</u> | <u>HOLDING (MAJORITY OPINION)</u> | <u>OBSERVATIONS</u> |
|------------|--|--|---|--|
| A. | U.S. v. School District of Fernadale (E.D. Mich. 1978) | School desegregation case of major proportions. | For school district. Construction of new school in white section of district did not constitute unlawful discrimination in view of natural demographics of area and absence of proof of discriminatory purpose or intent. | 1. Lengthy opinion rejected pure "effects" analysis and placed weight on legitimate interests of residents to have students attend school nearest their home. 2. Opinion was highly controversial and reversed by Sixth Circuit, but was reasonable in requiring evidence of purpose or intent, not merely the discriminatory effects of a school board decision. |
| C | Huron Valley Hospital v. City of Pontiac (E.D. Mich. 1979) | Antitrust law; Ripeness | For defendant. 1. Pending state antitrust action by plaintiff on same fact issues precluded federal court hearing of antitrust claims. 2. State-created hospitals are exempt from antitrust laws under "state action" doctrine. | Opinion displays deference to state court proceeding. In an effort to impose finality on the proceedings, Judge Kennedy offers a gratuitous advisory opinion on the antitrust issues. |
| D | Schroeder v. Dayton Hudson Corp. (E.D. Mich. 1979) | Retroactive application of state age discrimination statute. | For plaintiff. Plaintiff's failure to file age discrimination claim within limitation period of old statute was cured by the court's retroactive application of longer statute of limitations under subsequent state civil rights act. | Concise, albeit overly conclusory opinion on retroactivity of civil rights statute. |
| E | Dietz v. American Dental Association (E.D. Mich. 1979) | Review of Dental Association admission standards | For defendant association. Decision of dental association to "grandfather" certain practicing dentists into the association while rejecting other applicants based upon an oral examination was not arbitrary or capricious. | Opinion accords great deference to the determinations of self-regulating educational and professional organizations |

| <u>TAB</u> | <u>CASE</u> | <u>SUBJECT MATTER</u> | <u>HOLDING (MAJORITY OPINION)</u> | <u>OBSERVATIONS</u> |
|------------|---|---|--|---|
| F | <u>Marshall v. American Motors Corp. (E.D. Mich. 1979)</u> | Age Discrimination in Employment Act | 1. Summary judgment for defendant on claims involving discriminatory acts occurring outside the statute of limitations. 2. Summary judgment denied to defendant on other claims because factual issue of employer's "good faith" existed. | Relatively well-reasoned opinion. Reasonable use of statute of limitations to limit scope of complex action. |
| G | <u>Transmatic Inc. v. Gulton Industries (1977)</u> | Patent validity | Summary judgment for plaintiff. Subsequent utility patent on a light fixture embodying a lens already covered by prior design patent is invalid due to double patenting. | Opinion is thorough, but analysis of patent claims is not very clear. |
| H | <u>U.S. v. Weingarden (E.D. Mich. 1979)</u> | Social Security Fraud | Social Security Act provision prohibiting or bribes in connection with the furnishing of services paid for by federal funds was sufficiently clear to provide notice of illegality to defendants. | Motion to dismiss indictment denied. Thorough opinion. |
| I | <u>In re Upjohn Co. Antibiotic Liability Litigation (E.D. Mich. 1979)</u> | Grounds for protective order in discovery | In complex product liability litigation, protective order against dissemination of federal court discovery material to related state court plaintiffs would not be granted, but court would monitor each dissemination of information to ensure relevance to related state claims. | Judge Kennedy vacated order granted by another district judge prior to multi-district consolidation. Decision appears fair and principled in view of earlier broad protective order which was arguably a prior restraint in violation of the First Amendment. |
| J | <u>Schultz v. Newsweek (E.D. Mich. 1979)</u> | Libel and Slander | For defendants. Under Michigan law, qualified privilege exists for published material addressing an issue of "public interest." Plaintiff did not offer any evidence of malice on the part of Newsweek, thus creating no genuine fact issue for a jury. | Summary judgment for defendants. Opinion not clearly organized, but makes appropriate use of summary judgment device to prevent unduly long trials. |

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|------------|---|--|--|--|
| K | Parets v. Eaton Corp (E.D. Mich. 1978) | Choice of Law | 1. Plaintiff's claim of improper firing from South American job by Ohio corporation was properly governed by Ohio law. 2. Plaintiff's claim of breach of contract to provide employment in Michigan was governed by Michigan law. | 1. Defendant's motion to dismiss plaintiff's claims granted in part; denied in part. 2. Opinion reaches a correct result, but analysis is not entirely clear and addresses peripheral issues. |
| L | Gottfried v. Mayco Plastics, Inc. (E.D. Mich. 1979) | Standards for order to bargain under National Labor Relations Act. | For plaintiff (NLRB). Statutory public interest in promoting collective bargaining warranted interim injunction and bargaining order against employer who allegedly engaged in unfair labor practices. | 1. Interim injunction granted to NLRB. 2. Opinion presents a thoughtful analysis. |
| Mc | Yeretsky v. Blum (E.D. Mich. 1979) | State workmen's compensation claim | For defendant. State workmen's compensation act is exclusive remedy for work-related physical or mental injury which bars plaintiff's claim for emotional distress in common-law civil rights action. | Plaintiff's claim dismissed. Opinion is extremely sensible in preventing unnecessary duplication of worker's remedies, but analysis is not clearly articulated. |
| Mc 1 | <u>CIRCUIT COURT OPINIONS:</u> Brewer v. American National Insurance Co. (6th Cir. 1980) | Libel and slander | For plaintiff-appellant. Libelous statement made by employee to employer which led to termination of company agent must be submitted to a jury on issues of qualified employee privilege and enterprise liability under Kentucky law. | 1. Reversed District Court findings. 2. Relatively thorough review of Kentucky law. |
| M | Hockenbury v. Sowers (6th Cir. 1980) | Habeas Corpus | Federal Habeas review of state conviction denied: 1. Because defendant did not object to alleged error in timely fashion at trial; 2. Due to comity (deference to the state court's application of its own waiver of objection and "fundamental error" rules). | 1. Denied habeas relief. 2. Extreme deference shown to the state criminal trial process. |

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|------------|---|---|--|--|
| N | <u>Clutter v. Johns-Manville Sales Corp.</u> (6th Cir. 1981) | When claim for exposure to toxic chemical accrues. | For plaintiff-appellant. In applying the statute of limitations, asbestosis claim accrues not at the time of harmful exposure to asbestos, but rather when the disease is "manifested." | 1. Reversed District Court dismissal. 2. Thorough review of Ohio law. Opinion addresses an excessive number of arguably tangential considerations. |
| O | <u>Moore v. Califano</u> (Sixth Cir. 1980) | Federal Coal Mine Safety Act | For defendant-respondent. Administrative denial of black lung benefits was based upon substantial evidence. 1977 Reform Act's new evidentiary rules should not be applied retroactively to require a rehearing in this case. | 1. Affirmed HEW administrative denial of benefits. 2. Well-reasoned, limited review of administrative determination. |
| P | <u>Bills v. Henderson</u> (6th Cir. 1980) | State Prisoners' Civil Rights Action (42 U.S.C. §1983) | For plaintiff-appellees (in part). State regulations which only permit prisoner transfer to punitive segregation upon a showing of good cause entitle prisoner to some procedural due process prior to such transfer. | 1. District Court affirmed in part, reversed in part. 2. Extremely thorough and well-written opinion. While prisoners were granted some procedural protections, no formal hearing was required, a prisoners' damage claims were denied. |
| Q | <u>Carothers v. Rice</u> (6th Cir. 1980) | Federal Securities Fraud Claim | For defendant-appellees. Under controlling choice of law principles, Rule 10(b)-5 action was barred by application of Kentucky state securities law statute of limitations. | 1. Affirmed District Court findings. 2. General reasoning is very sound. Opinion addresses numerous peripheral issues. |
| R | <u>Transco Security v. Freeman</u> (6th Cir. 1981) | Due process: Suspension of federal contractors. | For plaintiff-appellants. Notice to contractors of suspension from GSA eligibility due to "bidding irregularities" was unconstitutionally vague in denying contractors a reasonable opportunity to respond. | 1. Reversed District Court findings. 2. Thorough analysis of the law. Court identifies a liberty interest of federal contractors which may be damaged by unsupported official allegations of fraud. Therefore, some opportunity to answer the charges is required |